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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIE WHEELER,
Petitioner,
v.
JOE LIZARRAGA,
Respondent.

No. 2:15-cv-1629 DB P

ORDER

Petitioner is a state prisoner proceeding pro se with a petition for a writ of habeas corpus under 28 U.S.C. § 2254. Before the court is petitioner’s petition and motion to proceed in forma pauperis (“IFP”). (ECF Nos. 1; 8.) For the reasons set for the below, this court will grant petitioner’s request to proceed IFP, dismiss the petition, and provide petitioner an opportunity to amend the petition.

BACKGROUND

Petitioner initiated this action in 2015 by filing a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. (ECF No. 1.) Therein, petitioner challenged his 2012 conviction and sentence rendered by the Amador County Superior Court. The previously assigned Magistrate Judge ordered petitioner to submit an affidavit in support of his request to proceed in forma pauperis. (ECF No. 7.) Petitioner timely filed a motion to proceed in forma pauperis in

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1 response to that order. (ECF No. 8.) On August 2, 2016, the case was reassigned to the
2 undersigned. (ECF No. 12.)

3 APPLICATION TO PROCEED IFP

4 Examination of the affidavit accompanying petitioner’s motion to proceed IFP reveals he
5 is unable to afford the costs of this action. Accordingly, leave to proceed IFP is granted. 28
6 U.S.C. § 1915(a).

7 SCREENING

8 I. Legal Standards

9 The court is required to screen all actions brought by prisoners who seek any form of
10 relief, including habeas relief, from a governmental entity or officer or employee of a
11 governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a habeas petition or portion
12 thereof if the prisoner raises claims that are legally “frivolous or malicious” or fail to state a basis
13 on which habeas relief may be granted. 28 U.S.C. § 1915A(b)(1),(2). This means the court must
14 dismiss a habeas petition “[i]f it plainly appears from the petition and any attached exhibits that
15 the petitioner is not entitled to relief[.]” Rule 4 Governing Section 2254 Cases.

16 Rule 11 of the Rules Governing Section 2254 Cases provides that “[t]he Federal Rules of
17 Civil Procedure, to the extent that they are not inconsistent with any statutory provisions or these
18 rules, may be applied to a proceeding under these rules.” Drawing on the Federal Rules of Civil
19 Procedure, when considering whether a petition presents a claim upon which habeas relief can be
20 granted, the court must accept the allegations of the petition as true, Erickson v. Pardus, 551 U.S.
21 89, 94 (2007), and construe the petition in the light most favorable to the petitioner, see Scheuer
22 v. Rhodes, 416 U.S. 232, 236 (1974). Pro se pleadings are held to a less stringent standard than
23 those drafted by lawyers, Haines v. Kerner, 404 U.S. 519, 520 (1972), but “[i]t is well-settled that
24 ‘[c]onclusory allegations which are not supported by a statement of specific facts do not warrant
25 habeas relief.’” Jones v. Gomez, 66 F.3d 199, 204 (9th Cir. 1995) (quoting James v. Borg, 24
26 F.3d 20, 26 (9th Cir. 1994)). See also Corjasso v. Ayers, 278 F.3d 874, 878 (9th Cir. 2002) (“Pro
27 se habeas petitioners may not be held to the same technical standards as litigants represented by
28 counsel.”); Porter v. Ollison, 620 F.3d 952, 958 (9th Cir. 2010) (“[T]he petitioner is not entitled

1 to the benefit of every conceivable doubt; the court is obligated to draw only reasonable factual
2 inferences in the petitioner's favor.”)

3 Rule 2(c) of the Rules Governing § 2254 Cases requires every habeas petition to (1)
4 specify all the grounds for relief available to the petitioner; (2) state the facts supporting each
5 ground; and (3) state the relief requested. Although, as stated above, pro se petitions receive less
6 scrutiny for precision than those drafted by lawyers, a petitioner must give fair notice of his
7 claims by stating the factual and legal elements of each claim in a short, plain, and succinct
8 manner. See Mayle v. Felix, 545 U.S. 644, 648 (2005) (“In ordinary civil proceedings ... Rule 8
9 of the Federal Rules of Civil Procedure requires only 'a short and plain statement[.] ... Rule 2(c)
10 of the Rules Governing Habeas Corpus Cases requires a more detailed statement.”) Allegations
11 in a petition that are vague, conclusory, or palpably incredible, and that are unsupported by a
12 statement of specific facts, are insufficient to warrant relief and are subject to summary dismissal.
13 Jones v. Gomez, 66 F.3d 199, 204–05 (9th Cir.1995); James v. Borg, 24 F.3d 20, 26 (9th
14 Cir.1994).

15 II. Discussion

16 Petitioner claims one ground for habeas relief in his petition. (ECF No. 1.) However, the
17 ground stated is overly vague and does not state a cognizable claim. Habeas relief under 28
18 U.S.C. § 2254 is available only on the ground that petitioner is in custody in violation of the
19 Constitution or laws or treaties of the United States. See 28 U.S.C. § 2254(a). Petitioner’s ground
20 for relief simply alludes to a bill that passed the California state senate without any explanation as
21 to the contents of that bill and how it applies to petitioner’s case. (ECF No. 1 at 5.) Petitioner
22 claims that his plea of nolo contendere falls under the senate bill and so the lower courts erred in
23 their rulings. Petitioner also attaches a number of documents from an unrelated case in Fresno
24 Superior Court. (Id. at 16-42.) Without further elaboration, the undersigned cannot substantively
25 assess whether petitioner’s claim is cognizable. Until petitioner has filed a habeas petition in
26 which he alleges at least one claim that is cognizable under 28 U.S.C. § 2254, this court will not
27 proceed to ordering that the petition be served.


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For the foregoing reasons, IT IS HEREBY ORDERED as follows:

1. Petitioner’s application to proceed IFP (ECF No. 8) is granted.
2. Petitioner’s petition (ECF No. 1) is dismissed with leave to amend.
3. Within thirty days of the date of this order, petitioner shall file an amended petition. The amended petition shall include the case number assigned to this action and shall be titled “First Amended Petition.” Petitioner is warned that the court cannot refer to his prior petition to make his First Amended Petition complete. Petitioner must include all claims for habeas corpus relief in his first amended petition.
4. The Clerk of the Court is directed to send petitioner a copy of the form used in this district for pursuing a writ of habeas corpus under 28 U.S.C. § 2254.
5. Petitioner is warned that his failure to comply with this order may result in dismissal of this action.

Dated: May 22, 2017


DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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